

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )

**MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC )**

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Participant in Auction No. 61 and Licensee of Various )  
Authorizations in the Wireless Radio Services )  
Applicant for Modification of Various Authorizations )  
in the Wireless Radio Services; )

Applicant with ENCANA OIL AND GAS (USA), INC.; )  
DUQUESNE LIGHT COMPANY; DCP )  
MIDSTREAM, LP; JACKSON COUNTY RURAL )  
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET )  
SOUND ENERGY, INC.; ENBRIDGE ENERGY )  
COMPANY, INC.; INTERSTATE POWER AND )  
LIGHT COMPANY; WISCONSIN POWER AND )  
LIGHT COMPANY; DIXIE ELECTRIC )  
MEMBERSHIP CORPORATION, INC.; ATLAS )  
PIPELINE—MID CONTINENT, LLC; DENTON )  
COUNTY ELECTRIC COOPERATIVE, INC., DBA )  
COSERV ELECTRIC; AND SOUTHERN )  
CALIFORNIA REGIONAL RAIL AUTHORITY )

Application File Nos.  
0004030479, 0004144435,  
0004193028, 0004193328,  
0004354053, 0004309872,  
0004310060, 0004314903,  
0004315013, 0004430505,  
0004417199, 0004419431,  
0004422320, 0004422329,  
0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962

For Commission Consent to the Assignment of Various )  
Authorizations in the Wireless Radio Services )

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FEB - 9 2012

Federal Communications Commission  
Bureau / Office

To: Hon. Richard L. Sippel, Chief Administrative Law Judge

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Maritime Communications/Land Mobile, LLC ("Maritime"), by its attorney, hereby respectfully responds to the *Enforcement Bureau's Comments on Maritime's Status Report on Discovery and Request for Partial Extension of Time*. Although styled as "comments," the Bureau's seeks modification of the presiding judge's February 7, 2012 *Order* (FCC 12M-18). It is therefore in essence a petition for reconsideration that Maritime hereby respectfully opposes.

There is no legal requirement that Maritime copy documents for the Bureau or any other party, only that it "permit inspection and copying" of the documents. 47 C.F.R. § 1.325(a). There

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is certainly no rule that Maritime, a bankrupt company, incur a \$6,000 expense so that all the other parties may have the documents for free. Finally, there is no rule whatsoever that prescribes "Bates" numbering of produced documents.

Maritime was faced with the following dilemma. It was willing to make the original documents available for inspection and copying, but felt they should be numbered as an internal control and accountability measure. With the documents sequentially numbered, Maritime would be able to determine if any documents were lost or placed out of order in the process of their being reviewed and copied by multiple parties. But that would have required Maritime to incur a \$2,000 obligation (the estimate for manually numbering the original documents) before even a single copy had been made. It was therefore determined that a more sensible plan would be to have the documents electronically scanned. Maritime was quoted an estimate of \$5,000 to \$6,000 for this, and this would likely include automatic numbering of the pages in the process of creating the resulting PDF files. This was of course a greater expense, but it was anticipated that any parties desiring copies of the documents would likely be willing to contribute toward this cost in exchange for a copy of the CDs, rather than incurring the expense of inspecting and copying the originals for themselves. On the other hand, if any party still wanted to inspect and review the originals, Maritime would have the scanned images as a backup—a satisfactory method of internal control and accountability.

The Bureau is unwilling to pay for the CDs. The Bureau would say it is unable to pay for them due to governmental restrictions, but Maritime has offered to authorize the printer to "blow back" (i.e., print physical copies) of the CD images or to provide a copy of the CDs themselves at the per-page copying rate prescribed in the GSA schedule. But even if this is precluded by some sort of internal governmental spending restriction, that does not justify imposing on Maritime an obligation it does not otherwise have. Maritime's too has financial spending

limitations. It is a debtor-in-possession currently relying on small amounts of periodic DIP financing, as approved by the Bankruptcy court, even to meet routine ongoing expenses such as the partial payment of salaries.<sup>1</sup>

The presiding judge's February 7, 2012, order lays out an acceptable solution to a very difficult problem. As stated earlier, Maritime has been working to comply with the document production request even before the motion for leave was granted, and has acted to timely comply with the most recent order. The order required that the first half of the original copies be made available to the Bureau for in-house inspection no later than noon yesterday. An hour before that deadline, the Bureau was advised that the boxes of originals were available for them. As of approximately 5:00 pm yesterday, and presumable still this morning, the boxes remain at the printer and the Bureau has not even sent anyone to even examine, much less retrieve them.

The ostensible concern about uniform numbering between the parties is a red herring. Admittedly, Maritime was too concerned about this, which is why the issue was addressed in its February 6, 2012, status report and extension request. But the matter is adequately addressed at footnote 2 of the February 7, 2012, order. Thus, while it is important that the producing party be able to account for its documents, this does not translate into a requirement that the same numbering system be used by all parties.

The Bureau's projections of confusion if different numbering systems are used is far overstated – it is a nonexistent or at best a minor issue. Virtually all documents to be used as exhibits at the hearing will be specifically copied, identified, and included with the offering party's pre-filed exhibits. In the unlikely event that there is any question about the version of a

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<sup>1</sup> As previously stated, Maritime will likely require bankruptcy court approval to pay out \$6,000 or more to reproduce these documents. The printer was nevertheless willing to begin as a courtesy to Maritime, in large part on the expectation that other parties would be willing to contribute toward the cost of the CDs or pay for blowback paper copies of selected pages.



particular document, this matter can be quickly and easily resolved at the pre-trial admissions session. Moreover, this would only be an issue if there were some dispute or discrepancy as to the content of the document itself. The fact that a particular presented exhibit has "Bates" numbers different than another copy in the possession of one of the parties is of no concern. The content of the offered document, not its numbering, is the only matter of significance. Similarly, in the course of a deposition, a witness will be asked to address the content of a particular document. That document will be included as a numbered exhibit and included with the deposition transcript. There will be no question that this is a copy of the document the witness addressed, regardless of any "Bates" numbers on it.<sup>2</sup>

"Bates" numbering is, therefore, one possible method of internal document control and accountability. A uniform system of numbering is neither necessary for this purpose nor an obligation and added level of complication and expense that should be imposed on the parties. Half the boxes have been sitting and waiting for the Bureau since 11:00 am yesterday. The other half will be available no later than Monday afternoon, and possibly earlier. Maritime remains willing to make electronic copies available to the Bureau at some cost that would presumably be far less than the cost it would occur in physically copying the documents, but that is a choice in the hands of the Bureau.

The February 7 order adequately addresses this matter, and it should not be reconsidered or modified. No further time should be wasted on this procedural squabbling.

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<sup>2</sup> Admittedly, the "Bates" numbers on the documents can sometimes be a convenience during witness testimony. But in undersigned counsel's experience after more than 32 years of practice, this usually comes in the form of clarifying a particular page of an exhibit counsel wants the witness to discuss. Thus, counsel may direct the witnesses attention to the part of a particular exhibit containing a particular range of "Bates" numbers. But just as often the same direction is given in terms of other internal numbering on the document itself or sometime in page numbering of the exhibit itself.

WHEREFORE, in light of the foregoing, Maritime respectfully opposes the Bureau's request for modification of the February 7, 2012, *Order* (FCC 12M-8) and asks that the order be reaffirmed.

Respectfully Submitted,



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Dated: February 9, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February, 2012, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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